IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A No. 679 of 2002.

Date of decision : April , 2007.

Sanjay Yadav,

.....Appellant

through Mr.C.B.Goel, Advocate,

v.

Anita Yadav,

.....Respondent

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

***

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

***

The appellant filed a petition, under Section 13 of the Hindu Marriage Act, 1956, for grant of divorce on the ground of cruelty and desertion. Vide judgment, dated 25.9.2000, the Additional District Judge, Gurgaon dismissed the petition. An appeal, filed by the appellant, was dismissed by the learned Single Judge, vide order dated 5.12.2001.

Challenge in this Letters Patent Appeal is to the aforementioned orders.

The appellant (husband) and the respondent (wife)were married on 3.12.1996 at Gurgaon. On 14.5.1998, the appellant filed a petition for grant of divorce on the ground of cruelty and desertion. The grounds of cruelty were sought to be established by pleading (a) behaviour of the

respondent in the matrimonial home towards the appellant, as also his family members was rude and inhumane, (b) during her very short stay, the respondent insulted the appellant and his family members over small matters, (c) the respondent is hot headed and in the habit of picking quarrels, (d) the respondent vitiated the atmosphere by abusing and insulting the appellant and his family members, (e) she insisted that the appellant should reside separately from his parents, (f) the respondent never cooked meals either for the appellant or his family members, (g) despite information, the respondent failed to attend the condolence ceremony of the appellant's uncle, (h) on numerous occasions, the respondent telephoned the appellant at his place of posting and threatened him with dire consequences and hinted that she would commit some unlawful act including committing of suicide, (i) the appellant served a legal notice, dated 15.4.1998 through his Advocate at Ajmer. The respondent visited the office of the appellant's Advocate and misbehaved with him, (j) the respondent had concealed her actual date of birth before marriage. The fact that she was two years elder to the appellant, led to mental agony, and (k) the respondent refused to co-habit with the appellant and declined to have sexual relations with him.

As far as the plea of desertion, it was sought to be substantiated by pleading that the respondent was posted as Assistant Director College Education, Haryana and lived with the appellant only for a few days at a time i.e a few days after the marriage, 4 to 5 days during May 1997 and June 1997 and for a similar period at Neemach (Madhya Pradesh). The respondent has been living separately since 1997 without just cause.

The aforementioned facts are, in sum and substance, the grounds upon which the appellant prayed for the grant of a decree of

divorce.

In her reply to the aforementioned allegations, the respondent denied the correctness of the aforementioned allegations and pleaded that even as per the appellant's pleadings, they had resided together for a few days and, therefore, it was near impossible to expect the respondent to have misbehaved with the appellant or his family members, pressurised him to live separately and refused to cook meals or serve relatives. In essence, the allegations with respect to cruelty and desertion were specifically denied. The respondent, in addition, pleaded by referring to specific instances of harassment with respect to inadequate dowry. It was also alleged that as the appellant was an officer in the CRPF, there was no occasion for the respondent, who was posted at Ambala and thereafter at Chandigarh, to pressurise the appellant into severing his relations with his family. It was further pleaded that after marriage, the respondent joined government service and made every attempt to meet the appellant at his place of posting and as admitted by the appellant, visited him on two occasions. She lived with him at Ajmer in May 1997 and at Neemach in January, March, April, May and June 1997 but was sent back on one pretext or the other. It was also pleaded that she was never informed of the demise of the appellant's uncle and, therefore, could not attend the ceremonies with respect to his last rites. The respondent denied that she had concealed that she was two years elder to the appellant.

On the basis of the aforementioned pleadings, the parties led evidence. After a perusal of the pleadings and an appraisal of the evidence adduced, the trial Court dismissed the petition for grant of divorce by holding that the appellant had failed to establish his plea of cruelty and

desertion. The appeal, filed by the appellant, met with the same fate.

Counsel for the appellant contends that the evidence and the documents on record clearly establishes that the appellant was treated with extreme cruelty by the respondent. Cruelty can be inferred from the respondent's behaviour towards the appellant during the period they co-habited. It is contended that though co-habitation was for small periods of time, the respondent made no attempt to adjust to matrimonial life. She misbehaved with the appellant and his family members and pressurized the appellant to separate from his family members. As the appellant withstood the pressure, the respondent left the matrimonial home, refused to reside with the appellant and took up separate residence at Chandigarh, where she continues to reside. It is further contended that a perusal of the letter, written by the respondent, in response to a legal notice, served at the behest of the appellant, the criminal complaints, filed against the appellant and his family members, establishes the appellant's plea of cruelty in its entirety. The respondent filed two criminal complaints before a Judicial Magistrate, and a complaint to the Director General of the CRPF. The allegations, levelled in these complaints, and the complaint, filed before the Director General of the CRPF, are false and baseless and, therefore, sufficient to establish cruelty. It is further contended that in her deposition as RW1, the respondent admitted to the filing of the aforementioned complaints and, therefore, even though cruelty, pursuant to fake allegations, levelled in these complaints, was not pleaded in the petition for grant of divorce, the appellant's claim for grant of decree of divorce on the plea of cruelty should have been accepted. False complaints, by a spouse amount, to cruelty sufficient to grant divorce. It is vehemently contended that as the

respondent, at the time of the marriage, concealed the fact that she was elder to the appellant, this fact, by itself, was sufficient to infer cruelty, as the deception, pleaded by the appellant, has not been denied by the respondent. It is also argued that the respondent has been residing separately since 1997, without just cause, and as desertion stands established, the learned Single Judge erred in dismissing the appeal.

It is further argued that the learned Single Judge failed to discuss the evidence, and refer to the pleadings. The impugned judgments are inherently incorrect and should be set aside. It is contended that marriage took place in 1996. The parties have been residing separately since 1997. As there is no chance of their resuming cohabitation and as the marriage has irretrievably broken down, a decree of divorce be granted.

The respondent-wife, who appeared in person, on the other hand, contends that a perusal of the record discloses that at every stage of the proceedings i.e before the trial Court, as also before the first appellate Court, she made every attempt to save the marriage and resume co-habitation. However, the appellant's attitude foiled all attempts of reconciliation. It is argued that as the appellant has failed to establish cruelty or desertion on the part of the respondent. The respondent is, even today, ready to reside with the appellant and, therefore, the appellant should not be rewarded for his intransigence by granting a decree of divorce.

It is further contended that as no fault has been found with the respondent, whether by the trial Court or by the first appellate Court, mere passage of time cannot be a ground to reward the appellant for his unbending and obstructive attitude towards the marriage. It is contended that at the root of this entire controversy, is a perceived and manufactured

wrong, namely, that at the time of their marriage, the respondent concealed that she was two years elder to the appellant. This wrong, which is one of the pillars of the plea of cruelty, is false. The appellant was aware of the respondent's age at the time of the marriage and, therefore, for him to say that the respondent concealed her true age, is a plea of convenience, raised with the object of fortifying a plea of deception, leading to cruelty. It is further contended that the filing of criminal complaints before the learned Magistrate and the filing of a complaint before the Director General of the CRPF, was a bona fide exercise of the respondent's rights and no cruelty can be inferred therefrom. It is also argued that even otherwise, the said documents were sought to be placed on record by way of C.M No.594 of 2006. This Court, vide order dated 24.10.2006, declined liberty to place the documents on record, while granting permission to avail of a fresh remedy, as regards the contents of the aforementioned documents, in accordance with law.

It is further contended that the judgments, rendered by the learned Single Judge, as also the trial Court, do not suffer from any error of jurisdiction or law, as would require interference and, therefore, the present appeal be dismissed.

We have heard counsel for the appellant, the respondent in person, and perused the paper book.

At the heart of this unfortunate dispute, lies an allegation of deception, levelled against the respondent, that at the time of marriage, she concealed the fact that she was two years elder to the appellant. This allegation is sought to be fortified by the admission of the wife as regards her age and by reference to a letter, dated 4.4.1997 (Ex.R3), allegedly

addressed by the appellant to the respondent. This letter was allegedly written by the husband, after he discovered the so-called breach of trust. The tenor of the letter, no doubt, suggests a feeling of betrayal but a perusal of the letter, and the pleadings, appears to suggest a cynical ploy to exploit the difference in ages to the advantage of the appellant.

In the letter, Ex.R3, the appellant accuses the wife's brother of deception, by failing to disclose the difference in age. However, in paragraph 3(n) of the petition for grant of divorce, this very allegation is levelled against the wife. This shifting of stance convinces us that the appellant utilized the difference in age to build up a case of betrayal of trust and deception, leading to a plea of cruelty. Even if we were to accept the correctness of the above allegations, the contradiction, as noticed herein above, dissuades us to hold in his favour.

In order to fortify our aforementioned conclusion, the appellant's letter, dated 4.4.1997, Ex.R3, needs to be reproduced, which reads as follows :-

> "Anita Neemach
>
> 4.4.97
>
> I do not know why it happens to me. I do not know how to put it in words. You must be noticing one thing that now-a-days my behaviour has changed and I am out away from you. You must be thinking what has happened to me. I think you must know it. Actually what has happened is that your brother Mahabir during the time of negotiation of our marriage has told your date of birth as 10.11.1967 when actually it is 1965 and my

date of birth is 11.5.67 i.e you are well even one and half year elder to me. If I had known the truth I would not have agreed you the marriage and Mahabir must have known it and therefore he has done this fraud with us. I do not know why he has done this. I think you must ask him.

I am very much shattered by this act of Mahabir and I just cannot accept my wife to be elder than me and in general it is not accepted. I cannot just think why it is done with me. I am sorry that you will have to suffer from the fraud of your brother but I cannot help it as he has played with my emotions and my whole life and I just cannot forget it. Now we should live our life in our own ways. From my side every thing is over now and we should not have anything to do with each other henceforth. That is the final decision of mine. Do not even try to contact me."

The tenor of the letter and the finality of the words, used therein, suggest a specific and categoric intention on the part of the appellant to sever all matrimonial ties. Thus, it was the appellant who sought to put an end to matrimonial ties and thereafter proceeded to serve a registered legal notice through his Advocate at Ajmer. Both husband and wife are highly educated and well placed in life. A small misunderstanding as to age, should not have led to the present litigation. The subsequent facts were a natural progression of the dispute, evidenced in the aforementioned letter.

It appears, from a reading of the evidence on record, the findings, recorded by the trial Court, and affirmed by the learned Single Judge, that the appellant claims that he was unable to reconcile to this difference in age and, therefore, made no attempt to ensure a successful matrimonial relationship. It appears that the appellant began avoiding the respondent and eventually when the respondent began pressing him for answers, he filed a petition for divorce. Even if the allegations were true, the appellant, instead of making an attempt to reconcile, utilized this fact to withdraw from matrimony and expressed a final opinion to sever all relationships, as noticed in the letter, Ex.R3, reproduced herein above. He thereafter served a legal notice upon the respondent and filed a petition for grant of divorce on allegations of misbehaviour, neglect of household duties etc. which were found to be false by the trial Court, as also by the learned Single Judge. The appellant's attempt to create a case of cruelty, where there was none, in our considered opinion, disentitles him to the grant of a decree of divorce. Difference in age should not have drawn such an irrational response as has been noticed in the present case.

The learned Single Judge, as also the trial Court held, as a matter of fact, that the allegations of cruelty and desertion, as set out in the petition, and as sought to be fortified by evidence, were not established. The allegations with regard to the respondent's misbehaviour with the appellant and his relatives were obviously false. As pleaded and as deposed, the parties resided together for a few days. There was no occasion for the respondent to have misbehaved, as alleged. A careful perusal of the deposition of the parties leaves no manner of doubt that these allegations of misbehaviour and pressure, brought to bear by the respondent on the

appellant to live separately from his parents, are a figment of the appellant's imagination, concocted with the object of assigning a degree of credibility to the petition for grant of divorce. The argument, addressed by counsel for the appellant that the learned Single Judge did not examine the case on merits, is without basis. A perusal of the impugned judgment reveals that the learned Single Judge examined the matter in its entirety, perused the evidence and other pleadings in detail and only thereafter arrived at a conclusion that the allegations of cruelty were unfounded.

As regards the allegations of desertion, there appears to be no shred of evidence to suggest that the respondent resided separately of her own free will and in disregard to the appellant's attempts to cohabit. Desertion is a question of fact to be established by cogent evidence. The evidence does not disclose any act on the part of the respondent that would enable us to record a finding of an unequivocal desire on the part of the respondent to sever matrimonial ties. The only evidence on record is that the respondent is working at Chandigarh, whereas the appellant is posted elsewhere. It is the appellant, who addressed the letter, Ex.R3, expressing his unequivocal desire to sever all matrimonial ties. There is no evidence to suggest that after the letter, Ex.R3, the appellant made any attempt to resume cohabitation. There is no evidence to suggest that the respondent ever expressed, by words or by necessary intent, a disinclination to join the appellant. Infact, she has all along prior to and even after the filing of the petition for divorce, made repeated attempts to cohabit with the appellant. The appellant, however, spurned these offers and placed repeated hurdles in the path of an attempt to resume cohabitation. The respondent's letter, Ex.PC, wherein she allegedly informed the appellant that she would

henceforth not fill his name as her husband in a form, has been satisfactorily explained by the respondent. Upon joining government service, the respondent was required to fill up a form disclosing the place of her husband's birth. The respondent repeatedly requested the appellant to provide information as to his place of birth, but for reasons that we fail to comprehend, the appellant did not do so. It was in this context that the respondent addressed a letter that she would not fill up the column of her husband's name. This outburst cannot be regarded as evidence of unequivocal desire to desert. Consequently, in the absence of any cogent or reliable evidence on record, the plea of desertion was rightly rejected by the trial Court, as also the learned Single Judge.

As regards the plea that during the pendency of the present petition, certain fresh facts have come into existence, and these facts should be taken into consideration, suffice it to say that the aforementioned facts were sought to be placed on record by way of C.M No.594 of 2006. Vide order dated 24.10.2006, the said prayer was declined, though liberty was granted to the appellant to file a fresh petition, law permitting. In this view of the matter, the aforementioned facts cannot be taken into consideration at this stage. However, it would be necessary to notice here that the two complaints, filed before a Judicial Magistrate, are pending adjudication. In A.Jayachandra vs Aneel Kaur, 1(2005) DMC (SC) 111, it was held that judicial notice can be taken of intervening facts. However, mere filing of a complaint would not lead to an inference of cruelty. As the complaints are pending adjudication before a Court of competent jurisdiction, mere filing of complaints alleging commission of offences of cruelty and demand of dowry etc., in our considered opinion, cannot be construed as cruelty, till

such time as falsity thereof is established. As regards the complaint, made before the Director General of CRPF, the allegations levelled with regard to appellant's character, have to be rebutted by the appellant so as to establish falsity thereof and this Court, vide its order, dated 24.10.2006, rightly declined to entertain the said documents, leaving it open to the appellant to seek appropriate remedy, in accordance with law.

Counsel for the appellant has relied upon Rishikesh Sharma vs Saroj Sharma, 2006 DNJ (SC)1061, Durga Prasanna Tripathy vs Arundhati Tripathy, AIR 2005 SC 3297, A.Jayachandra vs Aneel Kaur, 1(2005) DMC (SC) 111, V.Bhagat v. Mrs. D.Bhagat, AIR 1994 SC 710, and Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate, AIR 2003 SC 2462, to canvas that as the facts of the present case disclose an irretrievable break down of the marriage a decree of divorce be passed.

In Rishikesh Sharma's case (supra), though the Hon'ble Supreme Court has held that a decree of divorce could be passed on the ground of irretrievable break down of marriage, but a decree of divorce was granted in the peculiar facts of that case. The parties therein were married in 1972 and the petition for grant of divorce was filed in 1989. The criminal cases, filed by the wife, were found to be false and unsubstantiated. It was in this background that the Hon'ble Supreme Court granted divorce. In Durga Prasanna Tripathy's case (supra), divorce was granted as there appeared to be a complete and irretrievable break down of marriage, as also sufficient evidence to suggest desertion by the wife. The situation in the present case is entirely different. In A.Jayachandra's case (supra), the Hon'ble Supreme Court found, as a matter of fact, that the wife was guilty of cruelty and gave priority to her profession over her husband's freedom,

whose arrest she had sought. A conclusion of an irretrievably break down of marriage was, therefore, drawn and in order to do complete justice between the parties, a decree of divorce was granted. The other judgments, similarly relied upon by counsel for the appellant, do not advance the appellant's case in any manner, whatsoever.

As noticed herein above, the respondent does not appear to be at fault. The allegations of cruelty and desertion are general, vague and have not been corroborated by any cogent evidence. The mere fact that marriage took place in 1996 and divorce proceedings started in 1998, in our considered opinion, cannot be a circumstance to reward the appellant for his intransigent attitude as regards perceived wrongs and false allegations of cruelty and desertion. Consequently, as we find no merit in the present appeal, the same is dismissed with no order as to costs.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

April , 2007
'kk'